



Federal Mandate Review

Office of Performance Evaluations ♦ Idaho State Legislature

March 2000

Review 00-01HA

Idaho Public Television's Conversion to Digital Broadcasting

Executive Summary

The Idaho State Board of Education owns and operates five noncommercial television stations licensed by the Federal Communications Commission (FCC) and known as Idaho Public Television. Currently, each of these stations transmits analog broadcasts. Federal law and agency order have required all noncommercial television broadcasters to transmit digital broadcasts by 2003, and the FCC will not renew licenses for analog transmission beyond December 31, 2006. Federal funding through the Corporation for Public Broadcasting (about \$800,000 in fiscal year 2000) as well as the licenses to operate would be lost if digital conversion were not accomplished. However, it does not appear that these federal requirements constitute a mandate for purposes of the Federal Unfunded Mandates Reform Act because they do not impose an "enforceable duty" on the state. Rather, the act provides new broadcasting standards for television stations that wish to continue to hold a license.

At Issue. . .

Idaho Public Television has requested approximately \$4 million from the state general fund for fiscal year 2001 to begin converting its stations from analog to digital technology.¹ Idaho Public Television has identified this as the first installment of three, totaling \$11.5 million, to be requested for this conversion from the general fund over the next three years. The Office of Performance Evaluations was asked to review federal requirements related to the conversion and determine whether these requirements conflict with the Federal Unfunded Mandates Reform Act of 1995, which sought to curb the practice of imposing unfunded federal mandates upon state and local governments.

¹ This figure is adjusted from Idaho Public Television's original request of \$4.8 million for the conversion in fiscal year 2001. The three-year estimated total also was adjusted downward from an original \$12 million. The Governor has recommended funding of \$2.5 million from the Permanent Building Fund for fiscal year 2001.

Federal mandate reviews examine federal legal requirements made of the state, associated federal funding, and state compliance with the requirements. Unlike performance evaluations, these reviews do not follow audit procedures and do not conclude with findings and recommendations. This review was completed at the request of the Vice-chair of the House Appropriations Committee. Questions may be directed to the Office of Performance Evaluations, P.O. Box 83720, Boise, Idaho 83720-0055, or phone (208) 334-3880. The review is also available on our website at <http://www.state.id.us/ope>.

We asked:

- Do federal regulations require that Idaho Public Television convert from analog to digital broadcasts? If so, what deadlines must be met? What options do policymakers have to respond to these requirements?
- Do federal requirements conflict with the Unfunded Mandates Reform Act of 1995? If so, what are the ramifications of this conflict?

Current State Practice

- Idaho Public Television operates five public television stations located in Boise, Coeur d'Alene, Moscow, Pocatello, and Twin Falls. Signals from these five stations are re-broadcast by 34 translator stations to other areas of the state. Currently, each station and translator uses analog technology to broadcast programming to the public.

Federal Legal Requirements

- Under the Federal Communications Act of 1934, the FCC grants licenses that are required to operate commercial and noncommercial television stations, including Idaho Public Television.² Noncommercial stations may be run by government entities (as in Idaho), private non-profit entities, colleges, or universities.
- Federal statute and agency orders have required all television broadcasters to convert broadcasts from the currently used analog technology to digital technology to retain their licenses.³ Under the Telecommunications Act of 1996, Congress authorized the FCC to assign broadcasters channels on the digital spectrum and to recover the currently used analog channels for public auction.⁴
- Congress, the FCC, and other relevant authorities have established deadlines broadcasters must meet to comply with the conversion.
 - By April 2000, noncommercial broadcasters must certify their commitment to digital conversion to the Corporation for Public Broadcasting, the conduit through which Congress appropriates federal funds to noncommercial broadcasters.
 - By May 2000, noncommercial broadcasters must file with the FCC an application to construct digital facilities. However, according to an FCC order that departed from typical practice, broadcasters are not required to also demonstrate financial ability to construct and

² 47 U.S.C. § 151 et seq. (1999).

³ See generally, *Fourth Report and Order*, Federal Communications Commission, MM Docket No. 87-268 (December 24, 1996), and *Fifth Report and Order*, Federal Communications Commission, MM Docket No. 87-268 (April 3, 1997).

⁴ 47 U.S.C. §§ 309, 336 (1999).

- operate digital broadcasts.⁵
- By May 2003, all noncommercial broadcasters must complete relevant construction and begin broadcasting a digital signal.⁶
 - The FCC will recover for public auction all analog channels meeting specified conditions on December 31, 2006.⁷ The FCC has stated it will not renew analog channel licenses for use beyond this date.
- It does not appear that federal requirements related to digital broadcasting constitute a mandate for purposes of the Federal Unfunded Mandates Reform Act because they do not impose an “enforceable duty” on the state.⁸ While federal law has established new broadcasting standards with which licensed television stations must comply, the state is not legally obligated to operate Idaho Public Television or fund its digital conversion.
 - Even if federal laws requiring conversion to digital broadcasts were found by a court to violate the Unfunded Mandates Reform Act, they would likely not be invalidated because of noncompliance with the act. The Unfunded Mandates Reform Act does not prohibit a bill containing an intergovernmental mandate from becoming law. Instead, it specifies that such a bill is to include: (1) an estimate of the direct costs of the mandate on state, local, and tribal governments; and (2) spending authority related to the mandate.⁹ Further, recent federal court decisions have held that Congress’ failure to comply with these two requirements does not invalidate the law that was subsequently created.¹⁰

⁵ *Fifth Report and Order*, Federal Communications Commission, MM Docket No. 87-268 (April 3, 1997). Idaho Public Television officials have indicated, however, that filing an application with the FCC without having funds in place might wrongly imply that Idaho Public Television has the authority to commit the state to this project.

⁶ Commercial broadcasters must meet an earlier deadline of May 2002. Noncommercial broadcasters were given an extra year to comply because of their unique funding situation.

⁷ Recovery of an analog channel is contingent upon a finding that 85 percent of the specific television market served is able to receive digital broadcasts.

⁸ 2 U.S.C. § 1555 (1999).

⁹ 2 U.S.C. § 1501 (1999). Congressmen may object to bills that contain intergovernmental mandates but do not include these two items by raising a point of order with the presiding officer. In this case, the mandate is stricken from the bill unless a majority of the body votes to waive the point of order.

¹⁰ See, for example, *American Trucking Associations, Inc. v. U.S. Environmental Protection Agency*, 175 F.3d 1027 (D.C. Cir. 1999).

Funding Issues

- For fiscal year 2000, Idaho Public Television's budget from all sources totaled \$6.6 million. State general fund monies accounted for \$1.9 million, or about 28.8 percent of this amount.
- Federal funds from all sources totaled \$1.3 million, or 19.5 percent of the fiscal year 2000 overall budget. Approximately \$800,000 of these were federal funds passed through the Corporation for Public Broadcasting. Continued funding from this source is contingent upon the state's assurances that it intends to convert to digital broadcasting. The remainder (about \$505,000) came from U.S. Department of Commerce grants.
- Funds from other sources, such as contributions from individuals and corporations and fees for services to other state agencies, totaled \$3.4 million in fiscal year 2000, or 51.7 percent of the total budget.
- Although federal law does not prohibit private contributors from funding any or all of Idaho Public Television's operations or digital conversion, to date, Idaho Public Television has received no private contributions toward the estimated costs of conversion.¹¹ However, Idaho Public Television has entered into partnerships with several television and radio stations to share transmission facilities, which will reduce the overall costs of conversion if construction funding is granted for fiscal year 2001.
- Federal funds may be available to help cover the costs of conversion to digital broadcasts. Nationally, about \$26.5 million in merit-based, competitive U.S. Department of Commerce public telecommunications facilities planning and construction grants will be made available for qualifying projects in federal fiscal year 2000.¹² Idaho Public Television has applied for approximately \$727,000 of these funds to go toward the first year costs of conversion.¹³ According to Idaho Public Television's general manager, state funding could be reduced in the future by the amount of federal funds received.

Also, the Administration has proposed that during federal fiscal year 2001 an additional \$110.1 million be made available through the U.S. Department of Commerce to defray the costs of noncommercial stations'

¹¹ According to Idaho Public Television officials, they have approached two potentially large funding sources, one of which assisted with the development of digital conversion plans, but both have declined to assist in the cost of digital conversion.

¹² These funds will be granted for a variety of purposes, including public television conversions to digital broadcasting.

¹³ According to a U.S. Department of Commerce official, Idaho Public Television is one of 278 applicants. Decisions on the requests are expected in September.

conversion to digital broadcasts.¹⁴ These funds have not yet been approved.

Legislative Options

1. **Provide state funding for Idaho Public Television's conversion to digital broadcasting in this and subsequent fiscal years.** Assuming requested funding is adequate for the conversion, this option would ensure that Idaho Public Television could meet federal deadlines for the conversion, even if no other sources of funds become available.
2. **Request that Idaho Public Television pursue existing and future federal funds for the conversion to digital broadcasting.** As noted, Idaho Public Television has applied for federal funding to cover a portion of anticipated conversion costs in fiscal year 2000. Idaho Public Television officials did not apply for similar funding in previous years because they understood it would not be available to cover the costs of conversion. Additional funds may become available next fiscal year for which they would need to apply.
3. **Request that Idaho Public Television make additional efforts to obtain funding for the conversion to digital broadcasting through private contributions.** To date, Idaho Public Television has tended to use private contributions for operational costs. However, nothing prohibits these funds from being used to cover conversion costs, reducing the amount of state general funds needed.
4. **Do not provide state funding for Idaho Public Television's conversion to digital broadcasting.** In the absence of alternative funding, this would result in the loss of funds from the Corporation for Public Broadcasting as early as fiscal year 2001, existing Idaho Public Television channels at the end of 2006, and initial eligibility for the digital channels currently reserved.

¹⁴ The Administration has also requested \$197.5 million in "advanced funding" for federal fiscal years 2002 and 2003. According to the Association for America's Public Television Stations' estimates, proposed federal funding may amount to about 20 percent of the total cost to noncommercial stations nationally.